

1 BILL NO. B-95-03-11

2 GENERAL ORDINANCE NO. G- 09-95

3 AN ORDINANCE ESTABLISHING  
4 A COMMERCIAL DRIVER'S LICENSE  
5 DRUG AND ALCOHOL TESTING POLICY

6 WHEREAS, the U. S. Department of Transportation (DOT)  
7 has established specific legal requirements for employees who  
8 possess a Commercial Driver's License (CDL);

9 WHEREAS, the City of Ft. Wayne must adopt a drug and  
10 alcohol policy to conform with said legal requirements;

11 WHEREAS, a policy has been developed for city employees  
12 to address the specific legal requirements;

13 NOW THEREFORE BE IT ORDAINED BY THE COMMON COUNCIL OF  
14 THE CITY OF FORT WAYNE, INDIANA:

15 SECTION 1. The CDL Drug and Alcohol Testing Policy, a  
16 copy of which is attached hereto as Exhibit "A" is hereby  
17 adopted;

18 SECTION 2. That this Ordinance shall be in full force  
19 and effect from and after its passage and any and all  
20 necessary approval by the Mayor and shall apply to all  
21 agreements entered into after its effective date.

22 Cletus R. Edmonds  
23 Council Member

24 APPROVED AS TO FORM  
25 AND LEGALITY

26  
27 J. Timothy McCaulay  
28 J. Timothy McCaulay  
29  
30  
31  
32

Read the first time in full and on motion by Ravine, seconded by \_\_\_\_\_, and duly adopted, read the second time by \_\_\_\_\_, title and referred to the Committee on Regulations (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Common Council Conference Room 128, City-County Building, Fort Wayne, Indiana, on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M., E.S.T.

DATED: 3-14-95

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Ravine, seconded by \_\_\_\_\_, and duly adopted, placed on its passage. PASSED LOST by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	<u>8</u>			<u>1</u>
BRADBURY	<u>✓</u>			
EDMONDS				<u>✓</u>
GIAQUINTA	<u>✓</u>			
HENRY	<u>✓</u>			
LONG	<u>✓</u>			
LUNSEY	<u>✓</u>			
RAVINE	<u>✓</u>			
SCHMIDT	<u>✓</u>			
TALARICO	<u>✓</u>			

DATED: 3-28-95

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ANNEXATION) \_\_\_\_\_ (APPROPRIATION) \_\_\_\_\_ (GENERAL) \_\_\_\_\_ (SPECIAL) \_\_\_\_\_ (ZONING) \_\_\_\_\_ ORDINANCE RESOLUTION NO. 2-09-95 on the 28th day of March, 1995.

ATTEST:

(SEAL)

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Don J. Schmitter  
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 29th day of March, 1995, at the hour of 11:45 o'clock A, M., E.S.T.

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 31st day of March, 1995, at the hour of 11:00 o'clock P A. M., E.S.T.

Paul Helmke  
PAUL HELMKE, MAYOR

BILL NO. G-95-03-11

REPORT OF THE COMMITTEE ON  
REGULATIONS  
CLETUS R. EDMONDS - REBECCA J. RAVINE - CO-CHAIR  
ALL COUNCIL MEMBERS

WE, YOUR COMMITTEE ON REGULATIONS TO WHOM WAS  
REFERRED AN (ORDINANCE) (~~RESOLUTION~~) ESTABLISHING A COMMERCIAL  
DRIVERS LICENSE DRUG AND ALCOHOL TESTING POLICY

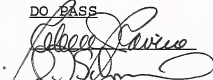
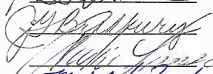
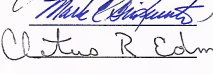
HAVE HAD SAID (ORDINANCE) (~~RESOLUTION~~) UNDER CONSIDERATION  
AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID  
(ORDINANCE) (~~RESOLUTION~~)

DO PASS

DO NOT PASS

ABSTAIN

NO REC

	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
Cletus R Edmonds	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

DATED: 3-28-95.

Sandra E. Kennedy  
City Clerk

CITY OF FORT WAYNE

POLICY & PROCEDURES

Workplace Alcohol & Drug Testing  
FOR CDL HOLDERS

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- 3.51 Management Information System
- 3.52 Employer Notification
- 3.53 Employee Notification
- 3.54 Record Retention

Approved by Mayor Paul Helmke \_\_\_\_\_

DATE: \_\_\_\_\_

**Workplace Alcohol & Drug Testing  
FOR CDL HOLDERS**

**1.1 SCOPE**

This policy applies to all City Employees who hold Commercial Driver's Licenses and is required by the United States Department of Transportation in 49 CFR Part 40 and Part 383.

49CFR Part 40 prescribes the mandatory procedures for random drug and alcohol testing programs and post accident testing.

**PURPOSE**

The purpose of this part is to establish programs designed to help prevent accidents and injuries resulting from misuse of alcohol or use of controlled substances by drivers with Commercial Driver's Licenses.

This program prohibits covered employees from performing safety sensitive functions when test results indicate alcohol concentration is greater than 0.04 or the employee is using illicit drugs and/or the employee is unable to perform a safety sensitive job.

**1.2 Definitions**

"Alcohol" - the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.

"Alcohol use" - the consumption of any beverage, mixture, or preparation, including any medication containing alcohol.

"Breath alcohol technician (BAT)" - an individual who instructs and assists individuals in the alcohol testing process and operates an evidential breath testing device (EBT).

"Commercial motor vehicle" (CMV) - a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle-

1. Has a gross combination weight of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or
2. Has a gross vehicle weight rating of 26,001 or more pounds; or
3. Is designed to transport 16 or more passengers, including the driver; or
4. Is of any size and is used in the transportation of hazardous materials requiring placards.

**"Confirmation test"** - for alcohol testing means a second test, following a screening test with a result of 0.02 grams or greater of alcohol per 210 liters of breath, that provides quantitative data of alcohol concentration. For controlled substances testing means a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the screen test and which uses a different technique and chemical principle from that of the screen test in order to ensure reliability and accuracy.

**"Department of Health and Human Services" (DHHS)** - The agency that certifies and monitors the laboratories who perform the analysis of the urine specimens for drug testing.

**"Driver"** - Any person who operates a commercial motor vehicle. For the purposes of pre-employment testing, the term driver includes a person applying to drive a commercial motor vehicle.

**"Employer"** - means City of Fort Wayne/City Utilities

**"EVIDENTIAL BREATH TESTING DEVICE" (EBT)** - The instrument approved by the National Highway Traffic Safety Administration (NHTSA) used for testing for alcohol in CDL holders.

**"FEDERAL HIGHWAY ADMINISTRATION" (F.H.W.A.)** - The administration that requires all CDL holders to submit to drug and alcohol testing.

**"GAS CHROMATOGRAPHY/MASS SPECTROMETRY" (GC/MS)** - Is a process used, after a positive immunoassay screen, for confirmatory testing. GC/MS testing provides very thorough information on the amount and kind of drug present in the urine sample. This process is a strong protection against false positive reports.

**"MANAGEMENT INFORMATION SYSTEM" (MIS)** - Annual reports submitted to DOT agencies from employers used to determine the rate of random alcohol tests. Must be submitted by March 15 of the following year.

**"MEDICAL REVIEW OFFICER" (MRO)** - A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by an employer's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his/her medical history and any other relevant biomedical information.

**"OMNIBUS ACT (1991) (OMNIBUS TRANSPORTATION EMPLOYEE TESTING ACT)"** - Requires alcohol and drug testing of safety sensitive employees in the mass transit industries - including motor carrier CDL holders.

**"Performing (a safety-sensitive function)"** - any period in which the driver is actually performing, ready to perform, or immediately able to perform any safety-sensitive functions.

**"Refusal to submit (to an alcohol or controlled substance test)"** a driver (1) Fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement of breath testing, (2) Fails to provide adequate urine for controlled substances testing without a valid medical explanation after he or she has received notice of the requirement for urine testing, or (3) engages in conduct that clearly obstructs the testing process.

**\* "Safety-sensitive function"** - any of those on-duty functions set forth in 395.2 On-Duty time, paragraphs (1 through (7) as listed below:

1. All time at a job site or garage, or City facility, or other property, waiting to be dispatched, unless the driver has been relieved from duty by the employer.
2. All time inspecting equipment as required by the Federal Motor Carrier Safety Regulations (FMCSRs), or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time.
3. All time spent at the driving controls of a commercial motor vehicle.
4. All time, other than driving time, spent on or in a commercial motor vehicle.
5. All time loading or unloading a commercial motor vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded.
6. All time spent performing the driver requirements associated with an accident.
7. All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

**"Screening test (aka initial test)"** - in alcohol testing it means an analytical procedure to determine whether a driver may have a prohibited concentration of alcohol in his or her system. In controlled substance testing it means an immunoassay screen to eliminate "negative" urine specimens from further consideration.

**"SUBSTANCE ABUSE PROFESSIONAL" (SAP)** - Licensed physicians limited to medical doctors, doctors of osteopathy, licensed psychologists, social workers, employee assistance professionals and alcohol and drug abuse counselors certified by National Association of Alcoholism and Drug Abuse Commission (NAADAC) who must have knowledge of and clinical experience in diagnosis and treatment of alcohol-related disorders.

### 1.3 POLICY

This policy applies to every person who holds commercial driver's license (CDL), or who operates a commercial motor vehicle in interstate or intrastate commerce, and is subject to the commercial driver's license requirements.

No driver shall report for duty or remain on duty requiring the performance of safety sensitive functions while having an alcohol concentration of 0.04 or greater. No employer having actual knowledge that a driver has an alcohol concentration of 0.04 or greater shall permit the driver to perform safety sensitive functions.

All current CDL holders shall have random drug and alcohol tests at a percentage of drivers with CDL's as prescribed by the U.S. D.O.T.

All new employees required to have CDL's, including those current employees who transfer into jobs that require a CDL, shall have alcohol and drug testing and pass same prior to being awarded the position and under no circumstances be allowed to perform safety-sensitive functions prior to passing the tests.

All testing will be conducted with methods set forth in the U.S. Department of Transportation (D.O.T.) Title 49 of the Code of Federal Register.

Breath Alcohol Testing shall be conducted as required using the U.S. Department of Transportation Breath Alcohol Testing form.

Post accident alcohol tests shall be conducted by sworn Law Enforcement and/or Risk Management Department.

Random, reasonable suspicion and post accident alcohol tests shall be conducted by the Risk Management Department with BAT certified technicians.

Random and reasonable suspicion urine drug tests shall be conducted by a medical provider identified by the City of Fort Wayne, Indiana.

All procedures shall comply with U.S. D.O.T. rules.

Post Accident testing shall be required where there is a fatality, or a citation is issued for moving traffic violation.

Test results shall be addressed per 49CFR D.O.T. rules.

Test results shall be forwarded to the Risk Manager for confidential filing.



## **Applicability and Implementation Dates**

### **1.4 APPLICABILITY**

With few exceptions, drivers required to have a commercial driver's license (CDL) and those who hold a CDL, are subject to the controlled substance and alcohol testing rules. A CDL is required for drivers operating a vehicle in excess of 26,000 pounds GVWR, (Gross Vehicle Weight Rating), designed to carry 16 or more passengers (including the driver), or of any size, which is used in the transportation of a placarded amount of hazardous material. This extends those currently covered by the rule to include both inter- and intrastate truck and motor coach operation, including those operated by:

- Federal, State, local and tribal governments

### **1.5 IMPLEMENTATION**

The alcohol and controlled substances testing rules shall be implemented as follows:

- Large Employers (50 or more drivers as of March 17, 1994)
  - must implement the requirements of the rule beginning January 1, 1995.

### **1.6 Employer's Drug and Alcohol Policy Requirements**

In order to have a successful drug and alcohol testing program, it is important that drivers know what is expected of them. The Federal Highway Administration requires each employer to provide educational materials that explain the requirements of the alcohol and drug testing regulations and the employer's policies and procedures with respect to meeting those requirements.

The City of Fort Wayne shall ensure a copy of these materials is distributed to each driver (who shall sign for receipt of the documents), prior to the start of alcohol and controlled substance testing. The materials required to be made available to drivers shall include, at a minimum, detailed discussion of the following:

- The identity of the person designated by the employer to answer driver questions about the materials.
- Which drivers are subject to the alcohol misuse and controlled substance requirements.
- Explanation of what constitutes a safety-sensitive function, so as to make clear what period of the work day the driver is required to be in compliance.

-Specific information concerning driver conduct that is prohibited.

-The circumstances under which a driver will be tested for alcohol and/or controlled substances.

-The procedures that will be used to test for the presence of alcohol and controlled substances.

-The requirement that a driver submit to alcohol and controlled substance tests.

-An explanation of what constitutes a refusal to submit to an alcohol or controlled substance test.

-The consequences for drivers found to have violated the prohibitions of this rule, including the immediate removal of the driver from safety-sensitive functions.

-The consequences for drivers found to have an alcohol concentration level of 0.02 or greater, but less than 0.04.

-Information concerning the effects of alcohol and controlled substance use on an individual's health, work, and personal life. Signs and symptoms of an alcohol or controlled substance problem, and available methods of intervening when an alcohol or a controlled substance problem is suspected, including confrontation, referral to an employee assistance program and/or referral to management.

#### **1.61 Prohibited Alcohol and Controlled Substance-Related Conduct**

The following alcohol and controlled substance-related activities are prohibited by the Federal Highway Administration's drug use and alcohol misuse rules for drivers of commercial motor vehicles (CMVs):

-Reporting for duty or remaining on duty to perform safety sensitive functions while having an alcohol concentration of 0.04 or greater.

-Being on duty or operating a CMV while the driver possesses alcohol. This includes the possession of medicines containing alcohol (prescription or over-the-counter), unless the packaging seal is unbroken.

-Using alcohol while performing safety-sensitive functions.

-When required to take a post-accident alcohol test, using alcohol within eight hours following the accident or prior to undergoing a post-accident alcohol test, whichever comes first.

-Refusing to submit to an alcohol or controlled substance test required by post-accident, random, reasonable suspicion or follow-up testing requirements may lead to disciplinary action up to and including discharge per City of Fort Wayne/City Utilities Policy 6.14:

-Reporting for duty or remaining on duty, requiring the performance of safety-sensitive function, when the driver uses any controlled substance, except when given written instructions by a physician who has advised the driver that the substance does not adversely affect the driver's ability to safely operate a CMV.

-Reporting for duty, remaining on duty or performing a safety-sensitive function, if the driver tests positive for controlled substances.

What drugs are tested for?

1. Marijuana (THC metabolite)
2. Cocaine
3. Amphetamines
4. Opiates (including heroin)
5. Phencyclidine (PCP)

**1.7 Consequences to Drivers Engaging in Conduct Prohibited by the Federal Highway Administration's Drug Use and Alcohol Misuse Rules**

Drivers who are known to have engaged in prohibited behavior, with regard to alcohol misuse or use of controlled substances, shall be subject to disciplinary action up to and including discharge per City of Fort Wayne/City Utilities Policy 6.14:

-Drivers shall not be permitted to perform safety-sensitive functions.

-Drivers shall be advised by the City of Fort Wayne of the resources available to them in evaluating and resolving problems associated with the misuse of alcohol or use of controlled substances, including a list of certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission substance abuse professionals (SAP).

-Drivers shall be evaluated by a substance abuse professional (SAP) who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and controlled substances use.

-Before a driver returns to duty requiring performance of a safety-sensitive function, he/she shall undergo a return-to-duty alcohol test with a result indicating a breath alcohol level of less than 0.02 if the conduct involved alcohol, or a

controlled substance test with a verified negative result if the conduct involved controlled substance use.

-In addition, each driver identified as needing assistance in resolving problems associated with alcohol or controlled substances shall be evaluated by a SAP, at the employee's expense, to determine that the driver has followed the rehabilitation program prescribed.

-The driver shall also be subject to unannounced follow-up alcohol and controlled substance testing. The number and frequency of such follow-up testing shall be as directed by the SAP, and consist of at least six tests in the first 12 months.

### **1.8 Types of Testing**

In order to enhance highway transportation safety, Congress passed the Omnibus Transportation Employee Testing Act of 1991. The Act required the FHWA to establish regulations requiring CMV drivers to be tested for use of controlled substances and the misuse of alcohol. The following are the types required to be performed.

- Pre-employment Testing
- Random Testing
- Reasonable Suspicion Testing
- Post-Accident Testing
- Return-to-Duty Testing
- Follow-up Testing

### **1.81 Pre-Employment Alcohol and Controlled Substance Testing**

Prior to the first time a driver performs safety-sensitive functions (any of those on-duty functions listed in the Federal Motor Carrier Safety Regulations section 395.2 On-duty time, paragraphs 1 through 7 - such as time spent driving vehicle, inspecting vehicle, loading vehicle, etc.) for the City of Fort Wayne, the driver must submit to testing for alcohol and controlled substances.

The City of Fort Wayne shall not allow a driver to perform a safety-sensitive function unless the result of the breath alcohol test indicates a breath alcohol level of less than 0.02, and has received a controlled substance test result from the medical review officer (MRO) indicating a verified negative result.

If the results of the driver's alcohol test indicate a breath alcohol concentration of 0.02 or greater, but less than 0.04, the driver shall not be permitted to perform safety-sensitive functions until the start of the driver's next regularly scheduled duty period, but not less than 24 hours following the administration of the test.

#### **1.82A      Random Alcohol Testing**

Random alcohol testing shall be conducted in accordance with the following requirements:

- Random alcohol testing shall be administered at a minimum annual rate of 25 percent of the average number of driver positions.

- The City of Fort Wayne shall ensure that random alcohol tests are unannounced and spread reasonably throughout the calendar year.

- The City of Fort Wayne shall ensure that drivers selected for random alcohol tests proceed immediately to the testing site upon notification of being selected.

- A Driver shall only be tested for alcohol while the driver is performing safety-sensitive functions, immediately prior to performing or immediately after performing safety-sensitive functions.

- In the event a driver, who is selected for a random alcohol test, is on vacation or an extended medical absence, the City of Fort Wayne can either select another driver for testing or keep the original selection confidential until the driver returns.

#### **1.82B      Random Controlled Substances Testing**

Random controlled substances testing shall be conducted in accordance with the following requirements:

- Random controlled substances testing shall be administered at a minimum annual rate of 50 percent of the average number of driver positions.

- The City of Fort Wayne shall ensure that random controlled substances tests are unannounced and spread reasonable throughout the calendar year.

- The City of Fort Wayne shall ensure that drivers selected for random controlled substances tests proceed immediately to the testing site upon notification of being selected.

-In the event a driver, who is selected for a random controlled substances test is on vacation or an extended medical absence, the City of Fort Wayne can either select another driver for testing or keep the original selection confidential until the driver returns.

#### **1.83 Reasonable Suspicion Alcohol and Controlled Substances Testing**

The City of Fort Wayne shall require a driver to submit to an alcohol or controlled substance test when the City of Fort Wayne has reasonable suspicion to believe the driver has violated the alcohol or controlled substance prohibitions.

"Reasonable Suspicion" - Belief that the driver has violated the alcohol or controlled substances prohibitions, based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver.

#### **1.84 Post-Accident Alcohol and Controlled Substances Testing**

As soon as practicable following an accident involving a commercial motor vehicle, the City of Fort Wayne through the Risk Management Department shall test for alcohol and controlled substances each surviving driver when either:

- the accident involved a fatality; or
- the driver receives a citation under state or local law for a moving traffic violation arising from the accident.

When a required controlled substances or alcohol tests have not been administered within a reasonable time frame following the accident, the following actions shall be taken.

<u>Time elapse</u>	<u>Action Required</u>
2 Hours	If the driver has not submitted to an alcohol test at this time, the Risk Management Department shall prepare and maintain on file a record stating the reason a test was not promptly administered.
8 Hours	Cease attempts to administer alcohol test, and prepare and maintain record described above.
32 Hours	If the driver has not submitted to a controlled substance test at this time, the Risk Management Department shall cease attempts to administer the test, and prepare and maintain the record described above.

#### **IMPORTANT NOTE:**

Nothing in this document (or the rule itself) should be construed

as to require the delay of necessary medical attention for injured people following an accident, or to prohibit a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.

#### **1.85 RETURN-TO-DUTY TESTING**

The City of Fort Wayne shall ensure that before a driver returns to duty requiring the performance of a safety-sensitive function, after engaging in prohibited conduct regarding alcohol misuse, the driver shall undergo a return-to-duty alcohol test indicating a breath alcohol concentration of less than 0.02.

The City of Fort Wayne shall also ensure that before a driver returns to duty requiring the performance of a safety-sensitive function, after engaging in prohibited conduct regarding controlled substance use, the driver shall undergo a return-to-duty controlled substances test with a result indicating a verified negative result for controlled substances use.

In the event a return-to-duty test is required, the driver must also be evaluated by a substance abuse professional (SAP) and participate in any assistance program prescribed.

#### **1.86 FOLLOW-UP TESTING**

Following a determination that a driver is in need of assistance in resolving problems associated with alcohol misuse and/or use of controlled substances, the City of Fort Wayne shall ensure that the driver is subject to unannounced follow-up alcohol and/or controlled substances testing as directed by the substance abuse professional. The driver shall be subject to a minimum of six follow-up controlled substance and/or alcohol tests in the first 12 months.

Alcohol follow-up testing shall be performed only when the driver is performing safety-sensitive functions, or immediately prior to performing or immediately after performing safety-sensitive functions.

#### **1.87 SPLIT SAMPLE TESTING**

Controlled substances tests conducted on or after August 15, 1994 must follow split sample procedures. Under this provision, a driver whose urine sample has tested positive for a controlled substance has the option (within 72 hours of being notified by the MRO) of having the other portion of the split sample tested at another laboratory. If the second portion of the sample also test positive, then the driver is subject to the sanctions contained in the regulations. If the second portion produces a negative result,

or for any reason the second portion is not available, the test is considered negative and no sanctions are imposed.

#### **1.88 EXCEPTIONS:**

The City of Fort Wayne is not required to administer a pre-employment alcohol test if the driver has undergone a DOT required alcohol test within the previous 6 months, with a result indicating a blood alcohol level below 0.04. However, the City of Fort Wayne must ensure that no prior employer of the driver has record of violations of any DOT alcohol misuse rules for the driver in the previous 6 months.

In addition, the City of Fort Wayne is not required to administer a pre-employment controlled substance test if the following conditions are met:

- The driver must have participated in a drug testing program meeting the requirements of this rule within the previous 30 days; and

- While participating in this program the driver must have either been tested for controlled substances in the previous 6 months, or participated in a random drug testing program for the previous 12 months; and

- The City of Fort Wayne through the Human Resource Department must ensure that no prior employer of the driver has record of violations of any DOT controlled substance use rule for the driver in the previous 6 months.

In order to exercise either of the exceptions listed above, the City of Fort Wayne through the Human Resource Department must first contact the alcohol and/or controlled substance testing program(s) in which the driver has participated and obtain the following written information:

1. The name(s) and address(es) of the program(s). This would generally be the driver's prior and/or current employer.
2. Verification that the driver participates or participated in the program(s).
3. Verification that the program conforms to the required procedures set forth in 49 CFR Part 40.
4. Verification that the driver is qualified under this rule, including that the driver has not refused to submit to an alcohol or controlled substance test.



5. The date the driver was last tested for alcohol and controlled substances.
6. The results of any drug or alcohol test administered in the previous six months, and any violations of the alcohol misuse of controlled substance rules.

### **1.9 Driver's Responsibility**

A driver who is subject to post-accident testing must remain available, or the City of Fort Wayne may consider the driver to have refused to submit to testing. The driver subject to post-accident testing must refrain from consuming alcohol for eight hours following the accident, or until he/she submits to an alcohol test, whichever comes first.

### **2.0 Employer's Responsibility**

The City of Fort Wayne shall provide drivers with necessary post-accident information, procedures and instructions, prior to the driver operating a commercial motor vehicle, so that drivers will be able to comply with the requirements of this rule.

\*\*The FHWA recognizes post-accident tests conducted by Federal, State and local officials as meeting the requirements of this rule under the following conditions:

- The official must have independent authority to conduct the test:
- Test must conform to Federal, State or local requirements.
- Alcohol tests require blood or breath sample; and
- Controlled substances tests require urine sample.

### **3.0 ALCOHOL TESTING RATE**

The FHWA Administrator may decide to increase or decrease the minimum annual percentage rate for random alcohol testing based on the reported violation rate for the entire industry. The decision to change the testing rate will be made according to the following results:

<u>Violation Rate</u>	<u>Testing Rate</u>
Less than .5% for 2 consecutive years	10%
.5% - 1.0%	25%
1.0% or greater	50%

Each year the FHWA Administrator will publish in the Federal Register the minimum annual percentage rate for random alcohol testing of drivers. The new rate will be come applicable on January 1 of the following year.

### 3.1 CONTROLLED SUBSTANCES TESTING RATE

The FHWA has proposed to lower the random testing rate to 25 percent if the industry-wide random positive rate is less than 1.0 percent for two consecutive calendar years while testing at 50 percent. The rate would increase back to 50 percent if the industry random positive rate were 1.0 percent or higher for any subsequent year.

### 3.2 SUPERVISOR TRAINING

The required observations for alcohol and/or controlled substances reasonable suspicion testing shall be made by a supervisor or company official who is trained in accordance with the following requirements:

- The City of Fort Wayne shall ensure persons designated to determine whether reasonable suspicion exists to require a driver to undergo alcohol or controlled substances testing receive: at least 60 minutes of training on alcohol misuse and at least 60 minutes of training on controlled substances use.

- The training shall cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.

### 3.3 ALCOHOL

Alcohol testing is authorized only if the observations are made during, just before, or just after the period of the work day the driver is required to be in compliance.

If a reasonable suspicion alcohol test is not administered within two hours following the observations, the City of Fort Wayne

through the Risk Management Department shall prepare and maintain on file a record stating the reasons the alcohol test was not administered promptly. In addition, if not administered within eight hours, the City of Fort Wayne shall cease attempts to administer the test, and shall prepare and maintain the record listed above.

*Currently, two supervisors must make the required observations to substantiate a reasonable suspicion controlled substance test. The supervisor who makes the determination that reasonable suspicion exists to conduct an alcohol test shall not conduct the alcohol test in order to preserve protection for the drivers.*

### **3.4 RECORDS**

A written record shall be made of the observations leading to a controlled substances test, and signed by the supervisor or city official who made the observations.

#### **NOTE**

The mere possession of alcohol does not constitute a need for reasonable suspicion testing, which must be based on observations concerning the driver's appearance, behavior, speech, or body odor.

#### **3.41 Retention of Records**

This document explains which controlled substance and alcohol test records must be completed and maintained, where they must be maintained and for how long. All records shall be maintained in the Risk Management Department with controlled access.

#### **3.42 Required period of retention:**

<u>Document to be maintained</u>	<u>Period required to be maintained</u>
Alcohol test results indicating a breath alcohol concentration of 0.02 or greater	5 years
Verified positive controlled substance test	"
Refusals to submit to required alcohol or controlled substance tests	"
Required calibration of Evidential Breath Testing Devices (EBT's)	"
Substance Abuse Professional's (SAP's) evaluations and referrals	"
Annual calendar year summary	"

Records related to the collection process (except calibration) and required training	2 Years
Negative and canceled controlled substance test results	1 Year
Alcohol test results indicating a breath alcohol concentration less than 0.02	1 Year

### 3.43 Types of records required to be maintained:

1. Records related to the collection process:
  - Collection logbooks (if used)
  - Documents related to the random selection process
  - Calibration documentation for EBT's
  - Documentation of Breath Alcohol Technician (BAT) training
  - Documentation of reasoning for reasonable suspicion testing
  - Documentation of reasoning for post-accident testing
  - Documentation verifying a medical explanation for the inability to provide adequate breath or urine for testing
  - Consolidated annual calendar year summaries
2. Records related to the driver's test results:
  - Employer's copy of the alcohol test form, including results
  - Employer's copy of the drug test chain of custody and control form
  - Documents sent to the employer by the Medical Review Officer
  - Documentation of any driver's refusal to submit to a required alcohol or controlled substance test
  - Documents provided by a driver to dispute results of test
3. Documentation of any other violations of controlled substance use or alcohol misuse rules
4. Records related to evaluations and training
  - Records pertaining to substance abuse professional's (SAP's) determination of driver's need for assistance
  - Records concerning a driver's compliance with SAP's recommendations
5. Records related to education and training
  - Materials on drug and alcohol awareness, including a copy of the employer's policy on drug use and alcohol misuse
  - Documentation of compliance with requirement to provide drivers with educational material, including driver's signed receipt of materials
  - Documentation of supervisor training
  - Certification that training conducted under this rule complies with all requirements of the rule
6. Records related to drug testing
  - Agreements with collection site facilities, laboratories, MROs, and consortia

- Names and positions of officials and their role in the employer's alcohol and controlled substance testing program
- Monthly statistical summaries of urinalysis (40.29(g)(6))
- The employer's drug testing policy and procedures

#### **3.44 Location of records:**

All required records shall be maintained in the Risk Management Department with limited access. Records shall be made available for inspection at the employer's principal place of business within two business days after a request has been made by an authorized representative of the Federal Highway Administration.

For example: Specific records may be maintained on computer, or at a regional or terminal office, provided the records can be made available upon request from FHWA within two working days.

#### **3.45 Release of Alcohol and Controlled Substances Test Information by Previous Employers**

The City of Fort Wayne may obtain from any previous employer of a driver, provided the driver has given his/her written consent, any information concerning the driver's participation in a controlled substances and alcohol testing program.

The City of Fort Wayne through the Human Resource Department must obtain and review the information listed below from any employer the driver performed safety-sensitive functions for in the previous two year. The information must be obtained and reviewed no later than 14 days after the first time a driver performs safety-sensitive functions. The information obtained must include:

- Information on the driver's alcohol test in which a breath alcohol concentration of 0.04 or greater was indicated

- Information on the driver's controlled substances test in which a positive result was indicated.

- Any refusal to submit to a required alcohol or controlled substance test.

If the driver stops performing safety-sensitive functions for the City of Fort Wayne before expiration of the 14-day period or before the City of Fort Wayne has obtained the information listed above, the City of Fort Wayne must still obtain the information. For example, if a driver quits after one week of employment and the information has not been obtained, the City of Fort Wayne must still obtain the information.

The City of Fort Wayne must provide to each of the driver's previous employers of the past two years a written authorization

from the driver for release of the required information. The release of this information may take the form of personal interview, telephone interviews, letters, or any other method that ensures confidentiality. The City of Fort Wayne must maintain a written, confidential record with respect to each past employer contacted.

The City of Fort Wayne may not use a driver to perform safety-sensitive functions if the City of Fort Wayne obtains information indicating the driver has tested positive for controlled substances, tested at 0.04 breath alcohol concentration, or refused to test unless the City of Fort Wayne has evidence the driver has been evaluated by a substance abuse professional, completed any required counseling, passed a return-to-duty test, and been subject to follow-up testing.

### **3.5 Annual Calendar Year Summary**

The City of Fort Wayne through the Risk Management Department shall prepare and maintain an annual calendar year summary of the results of its alcohol and controlled substances testing programs. All employers shall complete the annual summary by March 15 each year, covering the previous calendar year.

#### **3.51 MANAGEMENT INFORMATION SYSTEM**

Each year in January, the Federal Highway Administration (FHWA) will notify a select number of employers to submit their calendar year summary of alcohol and controlled substances test results. Upon notification the employer shall submit the required summary to the FHWA by March 15 of that year, to the location specified. The report shall be accurate and in the form and manner prescribed by the FHWA. When the report is submitted by mail or electronic transmission, the information requested shall be typed, except for the signature of the certifying official.

The report shall contain all the information outlined in 49 CFR Part 382.403. Sample forms detailing the required information shall accompany this document. The information is only required to be submitted when requested by the FHWA. If not requested, the annual calendar year summary shall be maintained by the employer for a period of five years, and presented for review, upon request from an agent of the U.S. Department of Transportation. If the report is submitted to the FHWA when not requested, it will be discarded.

#### **3.52 EMPLOYER NOTIFICATION**

The MRO may report controlled substances test results to the City of Fort Wayne by any means of communication; however, a signed, written notification must be forwarded within three business days of the completion of the MRO's evaluation.

The MRO must report to the City of Fort Wayne through the Risk Management Department the following:

- That the controlled substances test being reported was in accordance with 49 CFR Part 40.

- The name of the individual for whom the test results are being reported.

- The type of test indicated on the custody and control form (random, pre-employment, etc.).

- The date and location of the test collection.

- The identification of the persons or entities performing the collection and analysis of the specimens, and serving as the MRO for the specific test.

- The verified results of the controlled substances test (positive or negative) and, if positive, the identity of the controlled substance(s) for which the test was verified positive.

- That the MRO has made every reasonable attempt to contact the driver.

### **3.53 EMPLOYEE NOTIFICATION**

Prior to verifying a "positive" result, the MRO shall make every reasonable effort to contact the driver (confidentially), and afford him/her the opportunity to discuss the test result. If after making all reasonable efforts and documenting them, the MRO is unable to reach the driver directly, the MRO shall contact a designated management official, who shall direct the driver to contact the MRO as soon as possible (within 24 hours).

Under split-sample collection procedures, the driver has 72 hours following notification of a positive result to request the secondary sample be analyzed. In the event a split-sample was not taken, or was of inadequate quantity, the original test would be voided, and the driver would not be subject to a retest.

While the primary sample is tested a specific thresholds for each controlled substance, the secondary (split) sample is analyzed only for the presence of controlled substances. If a negative result is reached on the secondary test, the original test results are disregarded.

### 3.54 RECORD RETENTION

The MRO shall maintain all dated records and notifications for verified positive controlled substances test results identified by individual, for a period of five years.

The MRO shall maintain all dated records and notifications for negative and canceled controlled substances test results, identified by individual, for a period of one year.

The MRO shall not release the individual controlled substances test results of any driver to any person without a specific, written authorization from the tested driver. However, this shall not prohibit the MRO from releasing results to the employer or Federal, State, or local officials with regulatory authority over the controlled substances testing program.





# The City of Fort Wayne

Paul Helmke, Mayor

24-Hour Job Line (219) 427-1186  
Benefits Administration (219) 427-1198  
EEO/Affirmative Action (219) 427-1180  
Labor Relations (219) 427-1180  
Payroll (219) 427-1292  
Personnel (219) 427-1180  
TDD (219) 427-1443  
FAX (219) 427-1393

Department of Human Resources  
Room 380

## **MEMORANDUM**

To: Members of the City of Ft. Wayne Common Council

From: Nelson Peters, Director of Human Resources

Subject: Alcohol and Drug Testing for Commercial Driver's License Holders

Date: February 28, 1995

*8-95-03-11*

\*\*\*\*\*  
Recently, the federal government imposed additional rules and regulations on employers. Consequently, it was necessary to develop policies to conform to those guidelines.

The enclosed policy deals with alcohol and drug testing for those employees who hold a Commercial Driver's License (CDL). The policy establishes standards for drug and alcohol use established by the Department of Transportation.

I have enclosed this policy for your review. This will be introduced to you on March 14, 1995. I understand that discussion will occur on March 21 with final action to be taken on March 28.

Should you have any questions regarding this policy, Debby Anderson from Risk Management or I will be happy to discuss them.

cc: Greg Purcell

Enclosures

## DIGEST SHEET

TITLE OF ORDINANCE: An Ordinance Establishing A Commercial Driver's License Drug And Alcohol Testing Policy.

DEPARTMENT REQUESTING ORDINANCE:

Human Resources Department 03-09-95.

SYNOPSIS OF ORDINANCE: Specific requirements for employees who possess a Commercial Driver's License (CDL).

EFFECT OF PASSAGE: Will create a drug and alcohol policy to conform with legal requirements of Department of Transportation.

EFFECT OF NON-PASSAGE: Fort Wayne will not be in compliance with the U.S. Department of Transportation.

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS):

ASSIGNED TO COMMITTEE (PRESIDENT):